

Larry E. Craig, Chairman
Jade West, Staff Director

No. 36

Legislative Notice

Editor, Judy Gorman Prinkey

October 7, 1999

Treaty Doc. 105-28 – The Comprehensive Nuclear Test-Ban Treaty

By unanimous consent, the Committee on Foreign Relations was discharged from further consideration of Treaty Doc. 105-28 on October 6, and the treaty was placed on the Executive Calendar.

NOTEWORTHY

- Pursuant to a unanimous consent (u.c.) agreement of October 1, 1999, the Senate begins consideration of Treaty Doc. 105-28, the Comprehensive Nuclear Test-Ban Treaty (CTBT) on Friday, October 8, 1999, at 9:30 a.m. The u.c. provides for 14 hours of debate on the resolution of ratification, equally divided; it also provides for the Majority Leader and the Democratic Leader each to offer one relevant amendment that must be filed at the desk 24 hours before being called up. Each amendment is limited to four hours of debate, equally divided. A vote on adoption of the resolution of ratification will occur following the use or yielding back of time.
- The basic obligations of the States Parties are set forth in Article I, wherein each Party undertakes (a) not to carry out any nuclear weapon test explosion, or any other nuclear explosion; (b) to prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control; and (c) to refrain from causing, encouraging, or in any way participating in the carrying out of any such nuclear explosion.
- The Comprehensive Nuclear Test-Ban Treaty Organization (CTBTO) is established to implement the provisions of the Treaty and the international verification system. Each State Party is a member of the "Organization" which itself has three organs: the Conference of the States Parties; the Executive Council; and the Technical Secretariat.
- The Treaty is multilateral and of unlimited duration. The Treaty can only enter into force when and if all 44 countries who currently have nuclear power or research reactors, or both, ratify it.
- Compliance with the Treaty is intended to be verified by: an international monitoring system; consultation and clarification procedures; national technical means; on-site inspections; and voluntary confidence-building measures.

BACKGROUND

The CTBT was signed by President Clinton on September 24, 1996, and was transmitted to the Senate on September 22, 1997.

RPC has issued two papers highlighting the national security dangers underlying the CTBT: "Comprehensive Test Ban Treaty Jeopardizes U.S. Nuclear Deterrent," dated October 5, 1999, and "Comprehensive Test Ban Treaty Cannot Be Verified," dated October 7, 1999.

HIGHLIGHTS

Note: In this section of the Legislative Notice, RPC provides some of its own analysis of the Treaty, which is set in italicized font so as to distinguish it from verbiage contained in the Treaty text or in the Administration's article-by-article analysis which is contained in Treaty Doc. 105-28. That which is set in bold is for emphasis.

The Treaty includes a Preamble, 17 Articles, two Annexes, and a Protocol with two Annexes.

Article I: Basic Obligations

Each States Party agrees:

- Not to carry out any nuclear weapon test explosion or any other nuclear explosion;

The Treaty does not define what a nuclear test explosion is; however, the United States interprets it to mean that no nuclear tests can be conducted — a zero-yield ban. Other countries have not formally agreed to this interpretation.

- To prohibit and prevent any such nuclear explosion at any place under its jurisdiction or control; and,
- To refrain from causing, encouraging, or in any way participating in the carrying out of any nuclear weapon test explosion or any other nuclear explosion.

Article II: The Organization

The CTBTO is established for the purpose of implementing the Treaty. The costs of the Organization's activities are to be paid annually by the States Parties along the U.N. scale of assessments.

Three bodies comprise the Organization: The Conference of State Parties; the Executive Council; and the Technical Secretariat.

The Conference of States Parties

The Conference of States Parties consists of all States Parties and is the ultimate policy-making body for the Treaty. The Conference's role is to consider and review scientific and technological developments that could affect the operation of the Treaty. The Conference is also responsible for considering, for approval, any draft agreements, arrangements, provisions, procedures, operational manuals, guidelines, and other documents.

The Executive Council

Consisting of 51 members elected by the Conference, this leg of the Organization assigns each State to one of six geographical regions. Ten seats are apportioned to the States Parties from North America and Western Europe, and this is the forum which decides whether an on-site inspection can be conducted.

*The United States is **not** guaranteed a seat on the Executive Council.*

Under the terms of the Treaty, any State Party can request an inspection, but no inspection can take place unless approved by the 30 of the 51 members of the Executive Council.

While the United States sought during the negotiations to have an "automatic green light" for inspections at the request of a State Party, the Chinese successfully opposed this proposal. Instead, the CTBT has an "automatic red light" — no inspection can take place unless it is supported by 30 of the 51 members of the Executive Council.

The Executive Council is further charged with examining proposed changes to the Treaty's Protocol or the Annexes to the Protocol; approving and supervising the operation of agreements or arrangements relating to the implementation of verification activities with States Parties and other states. **These arrangements do not require prior approval by the Conference, i.e., all States Parties.**

Yet it is highly likely any arrangements that may be in place upon the Treaty's entry into force will change.

The Administration itself admits that the verification arrangements are subject to change: ". . . Negotiators recognized that a large number of such agreements or arrangements would be necessary for the establishment and operation of the IMS,

and that such agreements or arrangements could be subject to frequent change throughout their implementation" (p. 17).

The Technical Secretariat

This body is charged with verification of the Treaty, including supervising and coordinating the operation of the IMS and operating the International Data Center (IDC). Its job is to provide technical assistance in, and support for, the installation and operation of monitoring stations. The tasks include receiving, processing, analyzing, and reporting on IMS data.

The Technical Secretariat is headed by a Director-General and such scientific, technical and other personnel as may be required, with due regard paid to the **importance of recruiting the staff on as wide a geographical basis as possible.**

The Technical Secretariat is responsible for directing the conduct of on-site inspections.

Further, it is the Technical Secretariat's job to develop and maintain operational manuals to guide the operation of the various components of the verification regime. For instance, an Operational Manual for On-site Inspections is required under the terms of the CTBT before any inspection can be implemented.

The negotiations on this manual are still in an early phase. While meetings have taken place at which representatives from various signatory states, including the U.S., have presented papers, according to the Provisional Technical Secretariat, it likely will take years to reach agreement on technologies and the Operational Manual, and it would take additional years after that to procure equipment.

Article IV: Verification

The verification regime rests on: the International Monitoring System (comprising four different types of monitoring); consultation and clarification system (to address possible non-compliance concerns); U.S. national technical means (which may include IMS-type sensors, reconnaissance satellites, ships, aircraft, and ground stations equipped with non-IMS-type sensors); on-site inspections; and voluntary confidence-building measures.

On-Site Inspection

Obtaining supermajority approval by the Executive Council for an on-site inspection is not the only problem with the verification regime. The conduct of the on-site inspection is governed by specific procedures which give the inspected party plenty of opportunities to impede the inspection, while also limiting the conduct of the inspection.

The following are examples of limitations placed on those conducting the on-site inspections, and some of the rights provided the inspected party:

- The Verification Protocol **limits the inspection activities that may be conducted during the first 25 days of an on-site inspection** (p. 42). In carrying out the on-site inspection, the Treaty states that wherever possible, the inspection team shall begin with the least intrusive procedures and then proceed to more intrusive procedures only as it deems necessary to collect sufficient information to clarify the concern about possible noncompliance with the Treaty (p. 46).
- Drilling to obtain radioactive samples requires a **specific request to drill and approval by a majority** of the Executive Council before drilling can proceed (p. 42).
- **No State Party shall be required to accept simultaneous on-site inspections** on its territory or at a place under its jurisdiction or control (p. 44).
- While the State Party requesting an on-site inspection is allowed to send an observer, the **inspected State Party can refuse to accept the observer**. This refusal will be recorded in the inspection report (p. 47).

Other procedures governing the conduct of on-site inspections can be found in the Protocol to the Treaty.

Again, these procedures provide the inspected party with opportunities to hinder the inspection. Further, some of these procedures in themselves will hamper the inspection.

Some of the procedures are:

- "The Director-General shall determine the actual size of any particular inspection team and select its members from the list of inspectors" (p. 76).
- "...each State Party, at the time of initial designation, has the **right to bar specific inspectors** or inspection assistants from participating in any inspections of that particular State Party.... In case of such **non-acceptance...the inspector (or assistant) shall not undertake or participate in on-site inspection activities**" (p. 78).
- An inspected State Party is allowed to **refuse to accept a proposed observer** within 12 hours after approval of an on-site inspection by the Executive Council (p. 79).
- The inspected State Party is allowed to **restrict the use of approved equipment** in certain circumstances (p. 85).

- Among other things, the inspected State Party has the right to examine all photographic and measurement products, as well as sample and receive duplicate copies of the same, and **retain any photographs** or parts thereof showing sensitive sites not related to the purpose of the inspection (p. 94).
- The inspection team has the right to conduct one overflight over the inspection area during an on-site inspection. However, the inspected State Party has the **right to impose restrictions on flight altitude, number of passes and circling, duration of hovering, types of aircraft, number of inspectors, and the type of measurements or observations** (p. 97).
- The inspected party, to protect its national security, is allowed to: **shroud** sensitive displays, stores, and equipment; **restrict** measurement of radionuclide activity and nuclear radiation; **restrict** the taking or analyzing of samples to determine the presence or absence of radioactive or other products relevant to the purpose of the inspection; **manage access** to buildings and other structures; and declare **restricted-access sites** (p. 100).

Article V: Measures to Redress a Situation and to Ensure Compliance, Including Sanctions

The Conference is authorized to restrict or suspend a State Party's rights and privileges under the Treaty if the State Party has failed to redress a situation regarding questions of noncompliance. The Conference is given the power to recommend "collective action" by States Parties in cases of a serious breach of the Treaty. **The Conference does not have the power to impose collective measures, only to recommend them.** Further, according to the Administration's analysis, while Article V does not mention sanctions, "it is understood that the term 'collective measures' is **intended** to include, but is not limited to, sanctions" (p. 51).

Article IX: Duration and Withdrawal

The Treaty is of unlimited duration.

Each State Party has the right to withdraw from the Treaty by giving six months' advance notice, if it decides that extraordinary events related to the subject matter of the Treaty have jeopardized its supreme interests. The notice must include a statement of the extraordinary event(s) that a State Party regards as jeopardizing its supreme interests.

Article XV: Reservations

Reservations to the Articles of and Annexes to the Treaty are **prohibited**. Further, reservations are allowed only if they are compatible with the object and purpose of the Treaty. According to the Administration's analysis, "The Senate retains the right to express its views on all provisions of the Treaty and to impose conditions, consistent with the U.S. Constitution, in

connection with the Executive Branch ratification of the Treaty. **However, if such conditions included a reservation to the Treaty, the United States would be unable to ratify it**" (p. 62).

Staff Contact: Dr. Yvonne Bartoli, 224-2946